

# Flaws in Higher Education Governance are Putting the U of U at Risk

by John J. Flynn, Hugh B. Brown Professor of Law

The governance of colleges and universities has been an enduring source of controversy. At one time or another in the long history of higher education, paramount powers of governance have been claimed by students, faculty, clergy, administrators, boards of regents or trustees, and one or another branch or agency of one or another government. The University of Utah has lived through many of these governance claims and the debates they have generated since its founding. The most dramatic confrontation over governance powers occurred in 1915 when a controversy over tenure standards between the faculty, the administration and the community resulted in one third of the University of Utah faculty resigning. It became apparent that Utah could not have a university of quality if the institution were to be run from the top down without faculty and student participation in governance. Until recent times, and perhaps in light of the 1915 experience, there has been a pragmatic sharing of governance responsibilities over the University of Utah among all the various constituencies of the modern university with no ultimate confrontation over the question of who is "the boss."

During the period of shared governance, the University has become an outstanding academic institution and leading research university. It has an annual budget of \$885 million, a substantial part of which is raised by faculty and staff research grants and other forms of revenue, like income for clinical services provided by the University Hospital. Approximately 18-19 percent of the annual budget is derived from state funding. The state of Utah also supports eight other institutions of higher education, with a ninth "virtual university" called "The Western Governor's University" being established in cooperation with several other states. Each state supported institution in Utah has its advocates in the Legislature and on the board of regents. These political realities influence the funding, growth, and evolving academic mission of each institution. They are realities creating an increasing risk of spreading scarce funding resources too thinly and doing so for duplicating or unnecessary programs.

Governance of the system and each institution within it is presently vested in a 16-person board of regents, with a commissioner of higher education appointed by the board serving as its "chief executive officer." While each institution within the system has its own "board of trustees," no independent powers other than selecting honorary degree recipients are vested in the boards of trustees. The board of regents can delegate powers to individual boards of trustees, but it has not done so. Instead, governance power has been centralized in the hands of the regents and is implemented from the top down through the office of the commissioner of higher education. The relationship of institutional presidents to the regents is through the commissioner's office and not

direct. The commissioner's role has become that of a chancellor for the entire system in fact rather than just that of a chief staff person for the board, thereby generating ambiguity over the role of institutional presidents. The ongoing confusion over the relationship of institutional presidents, the boards of trustees, and bodies of internal governance to the board of regents and the commissioner's office has resulted in growing tensions between institutional presidents, the boards, and the commissioner, and between the board of regents and institutional boards of trustees.

This governance system was established to provide "centralized direction and master planning" for higher education in order to avoid unnecessary duplication and to maximize coordination of individual institutional roles within the system. It replaced an earlier "coordinating council" of higher education which sought to achieve the same goals. Whatever the merits in earlier and simpler times of the commissioner/board of regents approach, it is obvious that the system is no longer working in circumstances of an enlarged and more complex system of higher education. The shift from relatively autonomous, unique, and self-governing academic institutions governed by a partnership of diverse interest groups to a corporate or governmental bureaucracy managed from the top down by uniform policies has become pronounced. Where once presidential search committees were designed and selected in consultation with the faculty and staff, the board of regents now unilaterally decides what will be the level of faculty and staff participation "if any" and how that participation will be implemented; where higher education governance issues would once be studied by committees with significant faculty membership or participation, now governance studies are conducted by a regent's committee with little faculty participation or input; the role of tenure and teaching loads within institutions has become a matter for political commentary by legislators and study by a regent's committee; and, a new "Virtual University" is being established by the governor in collaboration with other states but with little or no input from existing institutions of higher education about the academic wisdom or effectiveness of such a method for providing an adequate education to students. In light of these developments, it should not be surprising that a significant number of faculty and staff are deeply concerned about the independence, governance, and future viability of a research university worthy of the name, and about their futures with the institution.

There is a need for responsible debate concerning a number of issues related to higher education, both within higher education and by the public generally. Among the issues which must be openly discussed and thoughtfully resolved are: what form of governance structure do we need for the coming decades to manage Utah's system of higher education, a system which has grown without much rhyme or reason and well beyond its ability to effectively or sensitively manage? Is there some role to be filled by institutional boards of trustees and the commissioner's office, or should one or the other be abolished in favor of some new governance structure? Are separate boards needed for academic institutions having

different academic functions? What should be the role of presidents and the faculty in governance vis-a-vis state government and the boards of regents or trustees? How should state funding be distributed between the different State institutions and what effect will formulae for allocating funding have upon the academic missions of specific institutions?

The time has come for a serious and comprehensive public debate on these and many other questions related to the future roles and objectives of higher education in Utah and how best to achieve those roles and objectives. The tendency to ignore the problems of higher education because of other pressing demands upon state government like postponed infrastructure needs, can only insure the continued unplanned growth of the present system and the decline of what has been a premier research university, the University of Utah. The ultimate question may soon be not who is the "boss" of higher education, but is there anything left worth bossing?

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